



INTRODUCTION.

THE Dispute between Dr. Andrew and Mr. Pitfield was at first entirely of a private Nature, and not very momentous in itself; but by means of a formal and tedious Reference, three Pamphlets, and more than twenty fugitive Publications, the Question is become important; because the Decision of the moral Characters, not only of the Principals, but of several others, must in a great Degree depend upon the Determination of it. The same Judgment that condemns Mr. Pitfield at all, must condemn him and his Witnesses, as Slanders and Lyars; and whoever may conclude that Dr. Andrew is guilty, must also conclude that, in a moral Sense, he is guilty of Dishonesty in dealing, as well as of *multiplied* Slander. It will easily be believed that, upon such an Occasion, I would very gladly

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be excused from appearing before the Public; but I am in a Situation, where to consult my own Ease and Safety would be Cowardice, and a negative Injustice at least to the Innocent, if not to every Person, who may, at present, or hereafter, be connected with the Characters under Consideration. Conscious however of the interesting Nature of my Subject, I shall proceed in my Narrative and Reasoning with Circumspection and Candor, without the Byass of Affection, Hatred, or Fear. The final Issue of this Debate may probably be *fatal* to the Reputation, and of Course injurious to the Fortune, of him whom the Public shall think to be the Aggressor; perhaps to such a Degree, that a general Compassion may succeed to a general Condemnation, and severe Reflection may fall upon me for having been an Instrument in producing the Distress. In Justice to myself therefore I ought to anticipate all Reproaches of this Nature, by declaring that I have no personal Ill-will towards either of the Parties.

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Parties. I neither have nor ever had ANY ADVANTAGE from the Quarrel: I accepted the Office of a Referee at the Desire of *Both* the Gentlemen, in Hope of effecting a Reconciliation between them; and when that failed, I persuaded and prevailed with Mr. Pitfield not to inflame the Difference by angry Advertisements; and I sent to Dr. Andrew, by an intimate Friend of his, the Offer of my hearty Endeavours with Mr. Chapple, to put a stop to that Torrent of Passion which I apprehended was ready to break out.--- But the Doctor was resolved; --- he would proceed, let the Consequence be what it would.-- The Consequence, therefore, whatever it may be, He alone is answerable for; and I wish from my Soul that He only might feel it. But such is the Nature of accidental or voluntary Alliances, that a Father, Brother, or Husband, cannot suffer *alone*. This Reflection, however painful, must not stop the Course of Truth and Justice. *These* are ever sacred, and in the present Case
are

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are a Debt indispenfably due to the World.

I would defire to poffefs the Reader with the fame Ideas that I have myfelf of this Matter, and to lay them before him in the fame Order as they occurr'd to me. My Plan therefore will be, Firft to relate what came to my Knowledge before the Reference: Secondly, to give the Subftance of what paffed at the Reference, as far as it tends to throw Light upon the Queftion: Thirdly, I fhall confider Mr. Shapleigh's Behaviour and Arguments: And Fourthly, I fhall give a Summary of the Facts, and leave the Reader to form his own Opinion.



A
STATE
OF THE
DISPUTE
BETWEEN

Dr. *Andrew* and Mr. *Pitfield*.

With free REMARKS upon the
BEHAVIOUR and ARGUMENTS
OF
Counsellor SHAPLEIGH.

By *RICHARD TREMLETT*.

— *Non ita certandi cupidus.* — LUCR.

*In hoc Negotio illa me res, Judices, consolatur,
quòd hæc, quæ videtur esse Accusatio mea, non potius
Accusatio, quàm DEFENSIO est existimanda.* CIC.

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GRIGG, Bookfellers.

MDCCLXL



All the Money that may arise from the Sale of this Pamphlet (the Bookseller's Commission only deducted) will be put into the Poors Box at the Hospital.



A
S T A T E
O F T H E
D I S P U T E
B E T W E E N

Dr. *ANDREW* and Mr. *PITFIELD*.

Occurrences previous to the Reference.

ABOUT three Weeks before the Reference Dr. Andrew came to my Father's House, and desired to speak with me in private. We went together into the Garden. The Doctor complained in very passionate Terms that Mr. Pitfield had traduced his Name unjustly and cruelly; that his Slander had taken place with many; and that therefore he was determined to have Satisfaction of some sort or other; and the least that he insisted on was a Submission from Mr. Pitfield.

I told the Doctor that, about six Months before, I had heard Mr. Pitfield speak of him as extremely blameable, for making use of unjustifiable

justifiable Means to obtain an Estate for much less than its Value; but that of late Mr. Pitfield, as far as I knew, had said little or nothing about the Affair.— The Doctor declared, that the Matter should not rest where it was; for he was *now* possessed of such Materials as must prove his own Innocence, and Mr. Pitfield's Guilt, or rather his blameable Credulity; for that Chapple had been the Incendiary, and he could undoubtedly prove Chapple to be an infamous Liar.

The Doctor then desired I would look at some Papers which he took out of his Pocket, to satisfy myself of the Injury he had suffered, in order that I might arbitrate this Difference between him and Mr. Pitfield. I begged to be excused from the Office, and told him that it would be much better to chuse a Man whose Age, Rank, and established Reputation for Judgment and Integrity might give a Sanction to a Decision. To this the Doctor replied in Terms that are generally called polite, and urged me with so much Warmth and Appearance of Candor to accept the Office of a Referee, that I at length complied, upon Condition that Mr. Pitfield would also desire me to undertake it, and that the Doctor and Mr. Pitfield would accord in chusing another Referee who should be agreeable to myself.— We then parted.

The next Day I acquainted Mr. Pitfield with our Conversation, who answered in this Manner: --- “ I don't know what it is that
the

the Doctor would have referred; but if there must be a Reference, I heartily desire that you will be the Referee, for I am determined I will look for no other; and the Doctor is welcome to chuse any other Person in Town."

The Dispute now seemed to be in a fair Way towards a Decision; but it was soon interrupted: For on my meeting Dr. Andrew in the Street, he very bluntly accosted me, — "What have you been saying to Mr. Pitfield?" I answered, "the same, Sir, that I said to you the other Day, and what I *then* told you I would say to him." A Conversation ensued, in which the Doctor took Occasion to speak of Mr. Chapple with outrageous Severity. I told the Doctor that I knew nothing of Mr. Chapple, but imagined, from what I had heard, that his Evidence must be very material at the intended Reference. The Doctor's Anger increased towards Mr. Chapple; but, as if recollecting himself, "What is it, said he, that Chapple will dare to say?" I told him I knew nothing of it; but supposed that, as he made the Valuation, his Testimony would determine a great Part of the Merits. Upon this the Doctor desired I would be so kind as to go to Mr. Chapple, and know from him what he could say in the Matter. In answer to this Proposal I said, "Doctor, you are about to constitute me your *Judge*; do you imagine I am to qualify myself for that Character by first going through the Offices of your *Messenger and Spy*? — The Doctor then left me abruptly.

Soon after this I learned that Mr. Pitfield had sent a Message to Dr. Andrew, importing, that he was willing to have their Difference examined and determined by me and *any Gentleman of the City* that the Doctor should name; but the Doctor, it seems, did not like the Limitation implied in the Words *of the City*. Mr. Pitfield, in a Conversation with a Friend of his and of the Doctor's a few Days after, being earnest to get rid of his present Vexation, said, "The Doctor may chuse any Man in England for a Referee that he pleases; I shall not object to him." --- This, being reported to the Doctor, produced a Billet, inviting Mr. Pitfield and his Friend to meet Dr. Andrew and his Friend at the Oxford Inn on the 19th of February.

The Reference was now settled; but my Expectation of its Utility was by no means sanguine. The Doctor's refusing to join with me any Gentleman of the City, and his keeping as a Secret the Name of the Person whom he had chosen to be *his Friend*, had an unfavourable and mysterious Aspect. The Appellations of *your Friend* and *my Friend* were incompatible with my Idea of the Character of a Referee, whose proper Description, as to the State of his Mind and Temper, I understand to be *a Friend to Truth alone* without Respect of Persons, whether from Esteem or Dislike, —
 WITHOUT FEE, HIRE, OR REWARD,
 PAST, PRESENT, OR TO COME.

This

This was my Sense of the Duty of a Referee when I went to the Place appointed, in order to assist in the Determination of a Dispute which by this Time was become a Subject of general Conversation in this City and its Adjacencies.

Proceedings at the Reference.

IN the Forenoon of February the 19th I called on Mr. Pitfield, to know whether he had been informed of the Name of the Gentleman who was to be a Referee with me. He told me that it was a Secret which he could not penetrate. Immediately we went to the Oxford Inn together, where we found Dr. Andrew alone; who presently retired, and very soon returned, introducing Counsellor Shapleigh, and acquainted us that this was the Gentleman whom he had chosen for *his Referee*. Mr. Pitfield grew uneasy, and hastily asked Dr. Andrew, "Why did you chuse a Lawyer? Why did not you take a Gentleman of the City?" To which the Doctor coolly answered, "You know you gave me Leave to chuse any Man in England."

Mr. Shapleigh, addressing himself to Mr. Pitfield, said, "Sir, If you have any Objection to me, I would not intrude myself into

this Business; I came to reconcile Quarrels, and not to breed new ones."--- Mr. Pitfield made no farther Difficulty, but asked me whether I was willing to join with Mr. Shapleigh as a Referee.--- I spoke to this Purpose;-- That as I did not understand Mr. Shapleigh and myself were to be considered as Advocates or Disputants, but the Deciders of Facts, and the moral or immoral Nature of them, I had no Scruple about sitting as a Referee with a Gentleman whose Experience and Profession had undoubtedly rendered him much superior to myself; because as I took for granted that Mr. Shapleigh did not appear *as a Lawyer* on this Occasion, *that* Superiority would only serve to discover Truth the sooner.

Mr. Shapleigh then said he thought himself obliged to acquaint us, that he had held several Conversations with Dr. Andrew about the Matter in Question; and therefore knew more of the Merits on *his* Side, than on Mr. Pitfield's; but that he would determine impartially, according to the Evidence which should now be produced.

We were now preparing for Business, when Dr. Andrew stood up, and unseasonably entertained us with an Harangue of about twenty Minutes. By the Help of Papers, which he held in his Hand, he gave a very circumstantial Narrative of his Proceeding, tending to his own Justification: He blamed Mr. Pitfield very lightly, but dwelt upon Mr. Chapple's Character with such Language as Anger and Hatred

tred only could suggest; declaring that he was too great a Lyar even to be heard in Evidence; and at the Close of his Speech (if I understood the Doctor, which I will not assert) he obliquely proposed a Reconciliation with Mr. Pitfield upon very easy Terms, in case Mr. Pitfield would join with him to demolish Chapple. — As soon as the Doctor had finished, I addressed myself to Mr. Shapleigh, and observed, that from this improper Beginning I apprehended a great deal of Embarrassment and Delay in the Sequel; — that we did not come there to hear Speeches out of Season, or to sit in Judgment upon Mr. Chapple, much less to be directed by either of the Parties what Evidence we should hear, and what reject; — that our Business, according to my Apprehension, was first to understand the Question precisely, to proceed in *our own Method* to find out the Truth, and then, if we should disagree in our Opinion, to chuse an Umpire whose Judgment should be final. For this Purpose, I told him, I had that Morning drawn Preliminaries, in which I had attempted to avoid Partiality and Obscurity, and desired to read them, that they might be corrected or admitted. — I accordingly read them, and they were then separately perused by all the Gentlemen; by whom when they were approved, I insisted on it that Dr. Andrew and Mr. Pitfield should sign the Paper: For if the Question was not ascertained, and the Authority of the Referees acknowledged, the one might be lost in a Multitude of
 of

of Words, and the other might be trifled with. — This Paper was at length signed, and the following is a Copy of it.

“ **W**Hereas a Dispute hath for some Time
 “ subsisted between Dr. Andrew & Mr.
 “ Pitfield, relating to the intended Sale of an
 “ Estate by Mr. Pitfield to Dr. Andrew, and
 “ occasioned by the Means made use of by the
 “ Doctor to procure a Valuation of the Estate,
 “ which Means Mr. Pitfield hath declared to
 “ be deceitful and fraudulent, and the Doctor,
 “ on the contrary, asserts to have been fair
 “ and honest, and that Mr. Pitfield hath
 “ therefore been guilty of groundless Slander
 “ against his Character: — And whereas the
 “ said Parties cannot of themselves come to an
 “ Agreement in this Matter, they do hereby
 “ refer the Decision of this Dispute to John
 “ Shapleigh, Esq; and Mr. Richard Tremlett,
 “ desiring and empowering them to make a
 “ full and impartial Inquiry into the Equity of
 “ the Case, in whatever Method and Manner
 “ they shall think best adapted to discover the
 “ Truth and Merits of the Question; which
 “ Inquiry is to be made upon the Principles of
 “ Common Sense and Conscience only: And
 “ in Case of a Disagreement in Opinion be-
 “ tween the said Referees, they are hereby au-
 “ thorised to call in a third Person, whose O-
 “ pinion, together with that of John Shap-
 “ leigh, Esq, or of Mr. Richard Tremlett,
 “ shall be conclusive and obligatory.

“ Dr.

“ Dr. Andrew and Mr. Pitfield farther de-
 “ clare, each for himself, that they will sub-
 “ mit to the Judgment of the two above-na-
 “ med Referees, or to that of one of them,
 “ corroborated with the Opinion of a third
 “ Person, called in by the two Referees, ei-
 “ ther in Point of (a) Damage sustained by ei-
 “ ther of the Parties, by means of what the
 “ one may have unjustly alledged to the Dis-
 “ advantage of the other, in this Dispute; and
 “ farther, that which soever of them shall ap-
 “ pear in the Sentence of the Referees to be
 “ the culpable Person, shall ask Pardon of the
 “ Injured, at any Time and Place appointed
 “ by the Sentence of the Referees, before
 “ three Witnesses, to be chosen by him who
 “ shall be deemed to have received the Injury.
 “ In Token of our Acquiescence in the a-
 “ bove Preliminaries, we sign our Names this
 “ 19th of Februaary, 1761.

“ John Andrew.

“ William Pitfield.

“ *Exon, Feb. 19, 1761.*

“ This Paper was signed by Dr.

“ Andrew and Mr. Pitfield

“ in my Sight,

“ James Downing.”

I would

(a) My Paper underwent an Alteration in this Place,
 for I had said, “ *With this Proviso, that the Judgment gi-
 ven do not immediately affect the Property or Possession either*
 of

I would beg the Reader to be attentive to the Matter of these Preliminaries, if he chuses to have a clear Idea of the Points which were to be tried by the Referees; and he will find the whole Substance of the Dispute to be this, — Were the Means which Dr. Andrew made use of to procure a Valuation of the Estate deceitful and fraudulent, or were they fair and honest? — Mr. Shapleigh in his *exact Copy of the Proceedings* at the Reference hath thought proper to omit the Preliminaries; probably because they contain a Provision for the Assistance of a third Person, in case of a Disagreement between the Referees. — But of this hereafter.

Dr. Andrew, being the Plaintiff, was asked what he had to lay to Mr. Pitfield's Charge? — He answered, "I charge Mr. Pitfield with having slandered my Reputation, by frequently asserting that I had made use of fraudulent and deceitful Means to obtain his Estate at an Under-Price." — Mr. Pitfield being asked whether

of Dr. Andrew or Mr. Pitfield."--- The Doctor declared that he would never sign the Preliminaries with this Clause in them, because it would be unjust to deprive him of a Pecuniary Satisfaction.--- Mr. Shapleigh supported him;--- Mr. Pitfield consented, and the Alteration was made; but it had no Consequence, for there was no Claim of Damage made throughout the Reference.

N. B. At the Time of signing this Paper, Mr. Shapleigh desired that if it ever should be shewn, the Reader might be told that *He* was not the Author of it; because it was not drawn up in a Lawyer-like Manner. In Justice therefore to that Gentleman, I declare that the Imperfections of this Paper are all my own.

whether he would put the Doctor upon the Proof of this Charge, replied, " I would not give you unnecessary Trouble: I have said, and do say, that the Doctor *did* make use of fraudulent and deceitful Means; and am ready to give such Reasons for saying so, as, I believe, will justify me in the Opinion of any honest Man."

Then Mr. Pitfield informed us, that some Time in the Year 1759, being in Conversation with Dr. Andrew about the Value and Income of Estates, he said, he found himself so liable to be imposed upon by Tenants, that he was weary of having any thing to do with them: That he had lately sold an Estate for above 500 *l.* which had not yielded him 5 *l.* clear the preceding Year, although it was tenanted: That he was determined, for this Reason, to sell his Estate at Alphington, which did not produce him more than 34 or 35 *l.* per Annum neat, although it cost him 800 *l.* for Three Lives, and was now let at 63 *l.* per Annum: That the Doctor said he would be a Purchaser, and asked the Price: That Mr. Pitfield answered he should have it in Preference to any Man in England: That he would chuse to sell it for an Annuity during his and his Sister Mary's Lives; but was too unskilful in Matters of this Nature to set a Price himself, and therefore would leave the Valuation of it to any capable and honest Man; to Mr. Chapple if the Doctor pleased, and his Valuation should be the Price between them: That the

Doctor agreed to this Proposal, and asked Mr. Pitfield what were the Outgoings of the Estate, and what it was let for; and Mr. Pitfield promised to furnish him with the best Information he could; but added, he could not be certain of all the Particulars, only he knew that the whole Estate was let for 63*l.* per Annum: That in future Conversations he informed the Doctor of several Articles of the Outgoings, and particularly mentioned the Land-Tax at 4*s.* saying he did not apprehend that this was to be reckoned as an Incumbrance in Perpetuity but as at 3*s.* or as is usual in such Cases. Lastly, that he desired the Doctor to get a complete Account of the Outgoings, and lay them before Mr. Chapple, whose Valuation should determine the Bargain.— Mr. Pitfield added, that very soon after this the Doctor brought him a Paper, and said, “ Here is Mr. Chapple’s Valuation, and by this you will see how much the Estate is worth: That he found to his Surprise the Sum was less than 350*l.* and upon examining the Articles separately, which were nine in Number, he found eight of them to be false and to his Prejudice; so that his Estate, which was really let for 63*l.* per Annum, was reduced to 57*l.* 6*s.* 8*d.* and the Outgoings, Insurance from Fire included, and the Land Tax reckoned at 3*s.*, being in Reality but 20*l.* 4*s.* 8*d.* were increased to 26*l.* 14*s.* 4*d.* — These together lessened the just Value of the Estate more than 12*l.* per Ann. clear. — Mr. Pitfield concluded from

from hence that the Doctor had an Intention to defraud him; and it appeared probable to him that Mr. Chapple was an Accessary in the Deceit. Upon this he went to Mr. Jeffery, who advised him not to suffer himself to be so imposed upon, and said that he could not be supposed to be bound to part with his Estate for a Price arising out of a Calculation made upon false Principles. — He added, That whilst he was talking with Mr. Jeffery on this Subject Dr. Andrew joined them; that they presently fell into a Dispute; and the Doctor did strongly, and several Times, insist on his having the Estate, by Virtue of their Agreement, for the Sum mentioned in Mr. Chapple's Calculation, viz. 350 *l.* That, after a good deal of Altercation, the Doctor proposed to have the Calculation carried back to Mr. Chapple, in order to have any little Articles altered that might be wrong; or, without that Trouble, the Doctor offered to advance the Price to 408 *l.* and that this was the Doctor's highest Offer. But Mr. Pitfield being satisfied of Dr. Andrew's unfair Practices, and suspecting Mr. Chapple's Honesty, refused to have any thing more to do with Mr. Chapple; but told the Doctor he would willingly leave the setting a Value on the Estate to Mr. Jeffery and Mr. Ley; but the Doctor would not consent to this, insisting still upon Mr. Chapple's Valuation, and so they parted. Mr. Pitfield being asked why he was so averse to Mr. Chapple's revising the Calculation, replied,

that he did *at that Time* suspect Mr. Chapple's Honesty, in having so much undervalued the Estate; not imagining the Doctor had concealed from Mr. Chapple that he was chosen by both to estimate its true Value for a Sale; but he soon found that Mr. Chapple had been as much deceived as himself.

Here Mr. Pitfield ended his Charge, and was asked several Questions by Dr. Andrew and the Referees, which produced the following Conclusions.

First, Mr. Pitfield's Account of his first Conversation with the Doctor is true; only the Doctor says, that instead of Mr. Pitfield's telling him that his Estate did not produce more than 34 or 35 *l.* per Annum, his Expression was, " he never made any thing like 35 *l.* per Annum of it."

Secondly, it was admitted by the Doctor that Mr. Chapple was to settle the Value of the Estate between him and Mr. Pitfield; and that the Doctor was to furnish him with Materials for that Purpose.

Thirdly, the Doctor says he has no Remembrance of Mr. Pitfield's telling him that the House and Gardens alone were ever let at 13 *l.*

Fourthly, the Doctor admitted that Mr. Chapple's Calculation was made from the Representation which he gave him, except the Articles of Herriots and the supposed Vacancy of the House.

Mr. Pitfield

Mr. Pitfield was now desired *to prove his* Charge; and for that Purpose he first called Mr. Chapple. — I shall be very concise in my Account of this Gentleman's Evidence, because he hath since published the Whole of it in a Pamphlet intitled *Calumny confuted*, and because I do not think many Words are necessary to recite that Part of it which immediately relates to our Question, viz. Were the Means which Dr. Andrew made use of to obtain a Valuation of the Estate fair and honest, or were they deceitful and fraudulent?

Mr. Chapple informed us that on the 24th of August, 1759, he being then sick, Dr. Andrew came to his House, and desired to know if he could furnish him with a Valuation of Mr. Pitfield's Estate, which he was in Treaty for. Mr. Chapple answered that he could not, because his Sickness would not admit of his going to Powderham, where all his Papers were which related to this Estate; and added, that probably he might be prevented, by his Sickness, from going to Powderham two or three Weeks, and till he was able to go thither to consult his Papers, he could not make a proper Valuation. — *Then* the Doctor took out a Paper, and told Mr. Chapple that it contained the Particulars of the Income and Outgoings of Mr. Pitfield's Estate, according to the best Inquiry he could make; and desired Mr. Chapple to make a Valuation from them, for the Doctor's own Satisfaction, as soon as he could; and Mr. Chapple made a Calculation

tion upon these written Materials, except only with respect to the Article of the House, which in the Doctor's Instructions is said to be *frequently* untenanted; and Mr. Chapple observing that this Expression was too vague to be admitted into an Arithmetical Calculation, the Doctor answered, you may say "untenanted half its Time." Mr. Chapple added, that, as the Doctor seemed in some Haste for the Calculation, he made it the same Day, and sent it to the Doctor the next Morning: But that, from what Recollection he had of the Estate, he strongly suspected that the Doctor's Particulars were very erroneous to the Disadvantage of it: He therefore made his Calculation as hypothetical only, and wrote under it to this Purpose, that the Calculation was just with respect to the above Materials; but whether these Materials were just or not, he could not tell. Mr. Chapple farther said, that he had since found a Calculation of the Estate, which he had made some Time before for the Purpose of a Sale, and that there the Income is reckoned at 63 *l.* per Annum instead of 61 *l.* according to the Doctor, and the Outgoings at 19 *l.* 19 *s.* 8 *d.* $\frac{1}{2}$, instead of 26 *l.* 14 *s.* 4 *d.* That he took this to be the Truth of the Case, and therefore the real Value of the Estate to be 200 *l.* more than it can be brought to, according to the Doctor's Account of the Income and Outgoings: And that the Doctor, by reducing the Rent of the House and Gardens, and supposing the Vacancy of the former, had lessened

lessened the real Value of *them alone* more than 60 l.

I then asked Mr. Chapple this Question —
 “ Did Dr. Andrew, in any Part of his Conversation with you, acquaint you that he
 “ and Mr. Pitfield had agreed to leave the
 “ Valuation of the Estate to you ? ” His Answer was, “ No, he did not mention a Word
 “ of any such thing, till a long while after,
 “ when he and Mr. Pitfield had quarrelled.”

We now adjourned, and being met again the 24th of February (*b*), Mr. Chapple confirmed what he had before related, and gave us an Account of a Conversation which he had with Dr. Andrew about the 20th of September, when he first discovered, to his Surprise, that he had been considered as having made an absolute Valuation of the Estate for Sale, and expressed his Resentment upon it, appealing to the Doctor whether he had ever considered him in that Light: — To which the Doctor gave no direct Answer, but said that the Calculation was right, according to the Instructions he had given to Mr. Chapple, except that there might possibly be one or two small Mistakes, and therefore would insist upon a Price agreeable thereto, when these Mistakes were corrected. This Conversation, however proper

(*b*) Mr. Chapple's Evidence by several Accidents was interrupted, and Mr. Jeffery and Mr. Sarell were heard during these Interruptions; but as such Intersections of Evidence tend only to embarrass the Reader, I chuse to avoid them, and give his Evidence in one View.

per and necessary for Mr. Chapple to relate at length, for his own Justification, is not, in my Opinion, material in the present Question; because the Fairness or Fraudulency of the Doctor must be determined by Occurrences *before* this Time, as he did not in this Conversation, or at any Time after, make use of any Means whatever to obtain the Estate; and therefore I shall here close Mr. Chapple's Evidence.

The next Witness that Mr. Pitfield called was Mr. Sarell, Reeve of the Manor of Alphington. — He informed us that within a Week of the End of February, 1759, Dr. Andrew came to him to know the Outgoings of Mr. Pitfield's Estate, and desired him to draw up an Account of them; which he did from his Books, setting down the Land Tax at 4 s., the Poor Rate at 4 l. &c. making the Whole of the Outgoings to be 21 l. 13 s. 1 d. $\frac{1}{2}$: And he informed us that these Outgoings were subject to change, according to the Occurrences in the Parish: That the Poor Rate for that Year was at 4 l. but that usually it was about 3 l. 10 s. He said farther, that Dr. Andrew asked Shilla-beer the Tenant, if he did not find the Overland too dear at 50 l. per Annum; and Shilla-beer answered he did; for that he had had bad Luck in it: But, as soon as the Doctor was gone, he told Mr. Sarell that he would beg Mr. Pitfield to make it in his Bargain that he might continue a Tenant on the Estate. Lastly Mr. Sarell told us that the Overland and the House and Gardens, which in the Whole

Whole had been let by Mr. Pitfield for 63 *l.* per Annum, were now let by Mr. Crofs for between 91 and 92 *l.* per Annum; and that Shillabeer continued to rent a Part of it at One-third more than he had given Mr. Pitfield.

Mr. Sarell having produced a Paper, said it was a true Copy, to the best of his Knowledge, of the Account of Outgoings which he had given to Dr. Andrew in August 1759; but the Doctor produced the Original, in which were omitted the Articles of Tythes and Repairs. The rest of the Articles corresponded to a Trifle. Upon this the Doctor thought proper to insult Mr. Sarell with very indecent Language. Mr. Sarell, upon Recollection, said, "that he remembered Dr. Andrew had directed him to leave out the Article of Tythes, because he was already acquainted with it; and, he supposed, he left out that of the Repairs for the same Reason." This only brought upon him severer Treatment from the Doctor, which, I am sorry to say it, was countenanced by Mr. Shapleigh. His Mistake appeared to me to be quite innocent, and neither had or could have any Influence upon the Question before us, because the Doctor had made no use of the original Paper from Mr. Sarell. I should therefore have entirely omitted this Incident, had it not appeared a Matter of Conscience with me to acquaint the Public with the Fact upon which Dr. Andrew hath since taken such Liberties in his Advertisements with Mr. Sarell's Reputation.

The next Witness was Councillor Jeffery, who informed us, that about the End of August, or Beginning of September, 1759, Mr. Pitfield told him of a Treaty which he had been in with Dr. Andrew about selling to him his Estate; that by Agreement between them Mr. Chapple was to make an Estimate of its Value, and fix a Price; that Dr. Andrew had given Materials to Mr. Chapple for this Purpose without his Knowledge, and in Consequence of this had brought him a Valuation of 350 *l.*, which was very much below its Worth, and insisted upon the Bargain.

That soon after this Mr. Jeffery, the Doctor, and Mr. Pitfield, had a Conference upon the Subject, in which the Doctor frequently and strongly insisted upon having the Estate according to Mr. Chapple's Calculation, saying, that Mr. Pitfield was bound by Honour and Agreement to stand to the Bargain: That Mr. Jeffery urged the Injustice of such a Claim, because the Calculation was evidently made on wrong Principles, particularly in the House and Gardens, which upon the Whole were reckoned in this Calculation as an Incumbrance: That he said to Dr. Andrew, " Doctor, if you would have the Estate, buy it in
 " a Manner becoming a Christian, and do not
 " attempt to take Advantage of Mistakes."
 That Dr. Andrew still insisted on his Bargain to have the Estate according to Mr. Chapple's Valuation: Then Mr. Jeffery said, " I will
 " give

“ give 500 *l.* for it, and I have no Doubt but
 “ it would sell for 600 *l.*”

Mr. Jeffery was asked if the Doctor offered to have the Affair referred back to Mr. Chapple, and replied, that *after the above Conversation* he believes the Doctor said to this Purpose, that “ if Things are misunderstood, they may be rectified :”--- But he did not understand by this, that the Doctor meant to refer *the Whole* again, but only one or two small Articles which had been pointed out as Errors in the present Valuation. Mr. Jeffery did not remember that the Doctor *ever* proposed a second Reference of the whole to Mr. Chapple; and he thought, by the general Tenor of his Discourse, that he could not mean any such thing. Mr. Jeffery farther said, that Mr. Pitfield offered to leave the Valuation of the Estate to him and Mr. Ley; which the Doctor refused; and after a Multitude of Words offered Mr. Pitfield for the Estate an Annuity of 28 *l.* which he thought equal to 408 *l.* This Mr. Pitfield rejected, and the Conversation ended.

Dr. Andrew desired that he might cross examine Mr. Jeffery; and having taken out a large Bundle of Papers, was asked by Mr. Jeffery what they were; and the Doctor replied, “ They are the Minutes of the Conversation which you have just mentioned, “ therefore take care what you say.” Mr. Jeffery told him that he could not pretend to remember every Word that had past between them; but he was sure he had related the

Substance, and would answer any Questions that were to the Purpose. The Doctor desired him to tell, whether this Conference was held in the Forenoon or Afternoon of September the 13th; Mr. Jeffery said, he was not certain, but supposed it to have been in the Forenoon. Upon which the Doctor said, "there I have you, for it was in the Evening." Then the Doctor, looking at his Memoranda, asked whether the Conference was held on the North or West Walk of the Churchyard. Many such Questions, which in my Opinion tended only to disturb and vex Mr. Jeffery, the Doctor put to him; and after a long while the Doctor asked him why he sent Mr. Pitfield to him for Chapple's Calculation. Mr. Jeffery answered, "Because, after what had past, I thought it was dangerous for him to intrust you with it." "Why so?" said the Doctor. "Because, replied Mr. Jeffery, it appeared to me that you had a Design to trick him." — The Doctor proceeded with his Questions till Mr. Shapleigh plainly told him to hold his Tongue; for that he had not asked a Question this half Hour that was worth a Farthing; and that he hurted his own Cause by what he had asked. The Doctor was silenced with this Rebuke; and I desired Mr. Jeffery to tell us sincerely, what his Thoughts of the Doctor's Behaviour were at the Time of the Conference; and Mr. Jeffery replied, that from the whole Tenor of the Doctor's Behaviour

our, he had no Doubt but that his Design was wrong, corrupt, and wicked.

The Evidence on the Part of Mr. Pitfield being ended, Dr. Andrew desired to be heard in his own Defence. He began with saying that about August the 26th he delivered Mr. Chapple's Calculation to Mr. Pitfield, and said that whatever Errors were in it he would have corrected: That he at several Times asked Mr. Pitfield to name a Day for settling the Bargain, but found him backward and reserved: That on September the 12th Mr. Pitfield came to his House, and told him not to be surprized if he should see the Estate advertised for public Sale: That on the 13th he had a Conference with Mr. Jeffery and Mr. Pitfield: That Mr. Jeffery said the Estate was much undervalued, and he himself would give 500 *l.* for it; not that he wanted it, but because he thought it would sell for 600 *l.* Then, continued the Doctor, I insisted pretty strongly on the Validity of my Bargain, but said if there were any Mistakes I would have them rectified; and offered him an Annuity of 28 *l.* instead of 24 *l.* 2 *s.* 9 *d.* according to Mr. Chapple's Estimation: But Mr. Jeffery advised Mr. Pitfield to have nothing more to do with Calculations, but to sell the Estate publickly: That after Mr. Jeffery was gone Mr. Pitfield continued in Conversation with the Doctor, and reproached him with having, in a sly and clandestine Manner, obtained an unfair Valuation from Mr. Chapple; and that therefore

therefore he would sell his Estate at a publick Survey; and upon this the Doctor concluded his Bargain to be at an end:

That about Nine of the Clock the same Evening Mr. Pitfield came to the Doctor's House, and gave him fresh Instructions to be laid before Mr. Chapple for a new Calculation; and then asked for Mr. Chapple's original Valuation, which the Doctor gave to him, and desired to have it again the next Day: That he did not give Mr. Pitfield this Calculation till Mr. Pitfield had given him the fresh Instructions.

[N. B. The several Articles of Outgoings, in what the Doctor calls fresh Instructions, amount to 23 *l.* 15 *s.* 4 *d.* and the Income to 63 *l.* Then follows a Letter sent with these fresh Instructions from the Doctor to Mr. Chapple, desiring a Valuation upon them.]

After this Dr. Andrew gave us an Account of a long Conversation which he held with Mr. Chapple in October, and which may be seen in Mr. Shapleigh's Pamphlet, and more at large in Mr. Chapple's.

“ And now, said the Doctor, I will prove
 “ that the Estate is liable to more Incum-
 “ brances, such as Way-Rate, &c. which
 “ I knew nothing of when I gave Mr. Chap-
 “ ple Materials for a Valuation.”

A good deal of Altercation passed between Mess. Shapleigh, the Doctor, and Mr. Pitfield, about what the Doctor called fresh Instructions dictated or admitted by Mr. Pitfield Sept. 13.
 and

and the Doctor at another Meeting did produce an Affidavit, which proved that Mr. Pitfield did either dictate or admit them: And I then said to Dr. Andrew, " Doctor, as you
 " have fairly proved that Mr. Pitfield did dic-
 " tate or consent to your writing these Articles,
 " and to your sending them to Mr. Chapple
 " for another Calculation, be pleased to tell
 " me for what Purpose this second Calculation
 " was to be made. Did you and Mr. Pitfield
 " agree that the Price produced by it should
 " be the real Price of the Estate between you,
 " and binding upon both?" To which the Doctor answered, " I cannot say it was so,"

The first Remark that occurs upon the Doctor's Defence is, that he begins it with " August the 26th I delivered Mr. Chapple's Calculation to Mr. Pitfield."— So that Mr. Pitfield's Account of their first Conversation, his trusting to the Doctor's Honour to furnish Mr. Chapple with proper Materials, is admitted to be true.

Dr. Andrew having made his Defence, proceeded to establish it by Evidence; and first he called Mr. Underhill, who told us that he knew the Estate in Question; that it was properly two; that each was liable to take an Apprentice, and to the several Offices of the Parish as well as that of Reeve. Lastly, that he had heard some body say that Shillabeer had bad Luck with the Orchards.

Finding what Kind of Evidence Dr. Andrew sat out with, I told him I would not pretend

pretend to direct him in his Proceedings; but it was my Opinion, he had better to begin with some substantial Part of the Charge against him. For Instance: -- Do you acknowledge or deny these Articles, which appear in Mr. Chapple's Calculation, to be the same you gave him? The Doctor said, " Yes they are the same." I then observed to him, that it was very material for him to give a good Reason, why he gave Mr. Chapple *such* Articles, which were almost totally false, and injurious to the Value of the Estate? To which the Doctor replied, " The Reason why I gave in such Articles, was in order to bring the Price of the Estate to what Mr. Pitfield said he made of it." — This Answer alone appeared to me decisive of our Question.

The Doctor then called Mr. Robins, a Carpenter; who said he had viewed the Estate, and thought that the necessary Carpenters Work upon it would amount to 5 *l.* a Year, without reckoning for the Stuff to be used. — John Gale, his Man, said the same thing. — Searle, a Thatcher, said that the Repairs in his Way would amount to 5 *l.* a Year, reckoning twenty Years together.

The next Witness that appeared for the Doctor was Mr. Dicker, who informed us, that on the 14th of September, by the Doctor's Request, he went to Mr. Pitfield, to ask for Mr. Chapple's Calculation, and to effect a Compromise between them; but succeeded in neither: That in October he went again, in
order

order to bring about a Reconciliation, but found Mr. Pitfield full of Resentment :

That all the Repairs of the Estate ought to be reckoned at 8 or 9*l.* per Annum, for that the Thatching alone could not be estimated at less than 5*l.* -- and being told that Mr. Pitfield's House and Gardens, in the present Calculation, were made of no Value, but rather an Incumbrance, he seemed to think that it ought to be so, and gave some Instances where Houses, &c. were not supposed in the Sale of Estates to be of any Worth, and that this was the Case particularly in Alphington. — I asked him if he was in Possession of this House and Gardens with no other Estate, and held them by the same Tenure as Mr. Pitfield did, whether he would not regard them as of some considerable Value? To which he answered, " Yes I should."

The last Evidence, relating to the Business of this Reference, was the Doctor's Servant, John Roper; who told us that, a Year and half ago, he heard Shillabeare say, he had not for some Time made the Rent of the Estate by 5 or 6*l.* a Year. Being asked why Shillabeare would not come to the Reference, and not readily giving an Answer, the Doctor replied for him, " He said he would not come " in to hurt Mr. Pitfield;" and then John repeated the same Words.

At the Close of the Evidence, Dr. Andrew desired we would hear Mr. Sheriff Walker, in order, as he expressed it, to prove Chapple a

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Liar.

Liar. The Referees objected to this; but, wearied at last with the Doctor's Importunity, we desired Mr. Walker to acquaint us with what he knew of that Matter: And Mr. Walker assured us, he was well convinced that Mr. Chapple was *not a Liar*: But he himself had committed an innocent Mistake, in a Conversation long since with the Doctor, which the Doctor had made an illiberal Use of.

Here ended what the Doctor called his Proof. But if there be one Circumstance in it, which tends to prove the Fairness of the Means which he made use of to purchase the Estate, I will be bound to turn all Mr. Shapleigh's Arguments into Heroic Verse. The Thatcher says, that the Repairs in his Way on the Estate would amount to 5*l.* per Annum. Mr. Robins and his Journeyman declare, that the Carpenters Labour and Nails would amount to as much without Stuff. Now suppose we allow for Stuff 10*l.* more; and that the Doctor had found a Glazier, a Smith, a Pumpmaker, a Pavier, and Weeding-Woman, who would have sung to the same Tune; the *necessary* Repairs of this House and Gardens, with their Incumbrances, would amount to near four times 7*l.* 6*s.* 8*d.* per Annum, which was the Sum they stood valued at in the Calculation.

I have some Apprehensions that this may turn out to be a very serious Affair; for if the Lord of the Manor should happen to be convinced of the Truth of what the Doctor *hath* proved,

proved, and by the same Method might have proved, the whole Village of Alphington may probably be extinct within a few Years; for who would continue to be the Owner of so many Houses, at such a monstrous Expence as they must necessarily bring upon him!

I have done with the Proceedings of the Reference, and shall now examine the Behaviour and Arguments of my Brother Referee.

Strictures upon Counsellor Shapleigh's Behaviour and Arguments.

HAVING gone through the Evidence, I shall freely lay open some Particulars of Mr. Shapleigh's *Behaviour* in this Transaction, before I consider his *Arguments*.

As soon as the Preliminaries were signed, I told Mr. Shapleigh that as we had excluded all Questions of Law, so I hoped he would avoid the *Manner* of Lawyers in his Proceedings, and go on in the plain Road of a Man of Sense and a Gentleman. — He answered, that he would do so. — But I soon perceived, that he not only wrote down all that was said, but copied the Papers which were produced, such as Mr. Pitfield's opening, &c.; whilst I recorded only what appeared to be of Weight

in the Case; and after Mr. Shapleigh had gone on in this Method for near three Hours, perceiving the Business to move forward very slowly, and that it would become exceedingly tedious, I put Mr. Shapleigh in mind of his Promise not to conduct the Affair in the Manner of a Lawyer, but as a Gentleman, and a Man of plain Sense. --- "God bless me! said he somewhat hastily, why so I do: Do you think, if I was acting like a Lawyer, I would write down one-third of all this? (pointing to his Papers) No, Sir. I set down *every Thing*, in order to preserve the Character you proposed." I mention this, to account for our spending three long Days and half at the Reference, a Circumstance which hath been much wondered at; and this, it seems, was owing to my being so ignorant as to imagine that the Method which a Gentleman would make use of to discover the Merits of a disputed Case, upon the footing of *common Sense and Conscience only*, was shorter than the usual Proceedings at Law. I was obliged to submit, and suffered severely in my Patience for the Blunder I had committed; and as Mr. Shapleigh hath made use of the long, or Gentleman-like, Method of giving the Evidence, I have adopted the shorter one, which, for ought I know, may therefore be after the Manner of a Lawyer.

In the Interval of our first Adjournment, I accidentally heard that Mr. Shapleigh had been imployed by Dr. Andrew, in the very Case that was now referred to him and myself:

self: That Mr. Shapleigh had written his Opinion upon it in the Doctor's Favour, had given it to the Doctor, and had been by him very handsomely fee'd for it. This Information came to me so well authenticated, that I could not totally discredit it, although I could not easily admit it to be true; because, in my Opinion, it included a very strong Presumption of a flagrant Disingenuity both in the Doctor and Mr. Shapleigh. Determined to be satisfied, as soon as we were met on the second Day, I told Mr. Shapleigh what I had heard; and asked him these Questions in a Breath; — *Have* you been consulted in this Matter, by the Doctor, as a Lawyer? — Have you given him your Opinion, and have you taken several Guineas as a Fee for it? To which Questions he answered by another, viz. "Suppose I have?" I instantly turned to Mr. Pitfield, and told him, that if he had any Objection to the Proceedings of the Reference, he had sufficient Reason to put a Stop to them; but he said, if I thought proper to go on, he would not break it off. Then Dr. Andrew declared warmly for continuing the Reference, and taking a Paper out of his Pocket, said he would read to me Mr. Shapleigh's Opinion. I asked him to look at the Paper myself, which he refused; and I was upon the Point of taking my Leave of my Brother Referee, if I may *now* with Propriety call him so. But he assured me, that notwithstanding he had given his Opinion upon hearing one Side of the Case

Case only, yet *that* should have no Byass upon his Judgment ; for he would now determine merely and only upon the Evidence that might arise in this Reference. I considered that, unless Mr. Pitfield insisted on breaking off the Reference, it might not be proper for me to do it : That a general Curiosity was awakened, and expected to be gratified, by Means of the Reference, with a true State of the Quarrel : That by leaving it in this Situation, the Passions of the Parties would be the more inflamed, and the Publick left in Uncertainty. But what determined me, more than all other Inducements, to continue the Reference, was the Certainty, as I imagined, of having the Assistance of some Man of Sense and Integrity for a Third Person, in case of a Difference between the Referees, at last. This I thought would be a sufficient Security on the Side of Truth and Justice, even supposing Mr. Shapleigh should be induced to give his Opinion under the Operation of his Fee ; but here I was again mistaken.

We finished our Examination of the Witnesses on Saturday the 7th of March about Noon ; and Mr. Shapleigh and I agreed to meet the Monday following, to compare our Notes and give Sentence. — We met accordingly ; and he began by remarking that the Question before us was great and important : That he had therefore very carefully put into Order the Proceedings, with his Opinion and Arguments for it ; which he said, if I pleased, he would
read

read to me ; — he did so ; and I believe it to be the same that he hath since printed.

I was disappointed to find his Opinion so totally different from mine, and that *his Arguments were all on one Side.* --- I made some Objections both to his State of the Facts and Reasoning, and went on to give my own ; but he did not chuse to hear me out, asking me if I had written my Sentiments : I told him I had not ; but would do it, in order to lay them, with his, before a third Person, whom it was our Business now to chuse, since there was no Probability of our agreeing. He asked whom I would chuse : I told him I had not thought on any Person in particular ; but there were Gentlemen enough in Exeter very capable, and proper for the Office of an Arbitrator. --- To this Mr. Shapleigh briskly replied, “ I will not have any one of this City.” — “ Pray why so ? ” — “ Because, said he, all the People of Exeter are prepossessed, and bedeviled with Prejudice against Dr. Andrew, and will have it that he is a Rogue, and I know not what.” — I told him I believed he was mistaken, and asked him if he did not think it exceedingly improbable, that all the Doctor's Fellow-Citizens, his nearest Neighbours, that have known, and had daily Intercourse with him upwards of twenty Years, should be more ready than Strangers to conclude him guilty ? — No Answer. — I then told Mr. Shapleigh that, imagining we might be of different Opinions, I had that Morning
thought

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thought on several that might be unexceptionable Men for Arbitrators : That I had written the Names of ten Gentlemen, which were contained in the Paper I then held out to him, and that if he would approve of any one of these ten (c) I would agree to it.

Without looking at the Paper, he asked if these ten had ever heard of the Dispute. I told him I was not certain, but believed there was scarcely any Person of Note in the City, or its Adjacencies, that had not. — “ I am determined, said Mr. Shapleigh, to have no Man for a third Person that hath heard any thing of this Quarrel, though it should be only by distant Rumour ; for every Man that hath, must be prejudiced one Way or the other.” — My Indignation, I own, began to warm, on hearing this Declaration ; but I tried him once more :--- “ Mr. Shapleigh, if you will name *only three Gentlemen*, either of the City or Country, whom you think to be proper for the Arbitration, I will bind myself to take one of the three.” ---- He would not ; but said he would give his Papers to Dr. Andrew, who might make what use he pleased of them. I did not

(c) The Gentlemen, whose Names were contained in the Paper which I offered to Mr. Shapleigh, were

John Baring, Esq;	Mr. John Holmes,
Rev. Mr. Chancellor Car-	Matthew Lee, Esq;
rington,	Rev. Mr. Canon Snow,
Richard Cross, Esq;	Rev. Mr. Weston,
Mr. Alderman Densham,	John Oliver Williams, Esq;
John Duntze, Esq;	

not now think it proper to with-hold my Re-sentment any longer; but expressed myself in this Manner: — “ It is astonishing to see you pretend to the Character of an impartial Referee. Your Objection to the chusing any Man for an Arbitrator, if he hath but *heard* of the Dispute, is frivolous in itself, and peculiarly absurd from *you*, who thought yourself a proper Person for the Office of a Referee, not only after you had *heard* of the Dispute, but after you had been *consulted as a Lawyer upon it*, after you had given your Opinion, and *received your Fee*.” ---- To all this Mr. Shapleigh was quite silent, and, as I conjecture, will ever remain so.

I have thus long dwelt upon the *Behaviour* of Mr. Shapleigh, to shew that it was not owing *to me*, that the Reference became abortive: And I trust that this Part of the Narrative will be a sufficient Apology for the Freedom, with which I have or may yet speak of him. Could it appear to me, that he came to the Reference with an equal Mind, or but free from a pecuniary Byass; had he, according to the Tenor of our Preliminaries, agreed in the Choice of an Umpire, we might still perhaps have differed in Opinion, but I should always have mentioned his Name with Respect, and strictly have preserved that Tenderness and Delicacy in my Expression, which a decent Man will always maintain in a Controversy that *only* concerns a Difference in Opinion. But if a Man will not scruple to sit in Judgment after

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he hath secretly taken Money on one Side; if he will defeat the very Purpose for which he became a Referee, by making it next to impossible to chuse an Arbitrator between him and his Colleague; if he will widen the Wounds which it was his Duty to close, and furnish Arms for a Battle when he should have negotiated a Peace; — his Opponent may, for his own sake, restrain himself from intemperate Language; but he hath an undoubted Dispensation for a Degree of Freedom, which would be unbecoming towards one who deserved to be regarded as a Gentleman, free from all external Influence.

Had not Mr. Shapleigh rendered the Choice of an Umpire impracticable, the Dispute had been long since terminated — no Opportunity would have been given to Dr. Andrew for his many abusive Advertisements, which even disgraced our News-Papers, and have exposed him to new Danger. And I appeal to the Publick, whether Mr. Shapleigh is not, in a great measure, answerable for the Mischief and Trouble which have accrued to Messrs. Jeffery, Pitfield, Chapple, and even the Doctor himself, *since the Reference*, and whether the Doctor may not thank his Counsellor for the Apprehensions he may be under from the Law's Resentment; as I certainly may, for the disagreeable Necessity I am under of becoming an Author.

I hope the Reader doth not imagine, that I would have him consider what I have related
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of Mr. Shapleigh as an Answer to his Arguments --- By no Means --- My Design in it hath been to prevent this Gentleman's Opinion from having that Respect, which would have been due to it, had we been certain that he spoke as a Man of Sense and Honour *without a Fee*. For after a Lawyer hath received Money from a Client, I apprehend, he becomes bound, according to his own Sense of Honour, to exert himself for the Success of *that* Side on which he is fee'd; and this same Sense of Honour gives him a Dispensation for Partiality, and perhaps obliges him to use a Latitude in his Conduct and Pleadings, which Men of a philosophic Sense of Honour are not allowed to indulge in, and therefore it may be they condemn it.

But from what Motive soever Counsellor Shapleigh's Arguments may proceed, if they are substantially good, they ought to have their proper Effect; and I now proceed to the Examination of them.

The Counsellor, pa. 45, begins his Observations, &c. with Eleven Positions, which serve as Outworks to his Opinion. I have attentively considered them, and do admit that Ten of them are true; and they are a Collection of as mild and innocent Truths, as I ever met with in a Controversy. Far be it from me to give them any Disturbance! Peace be with them! — I say to Ten of them: And that they may remain uncorrupted, I must desire the ninth, which is of a different Nature, to remove out

of their Company, and to take a Place among the Doctor's Advertisements.

Pa. 47. " 9. Mr. P—— admits, the Doctor did, on seeing this Estimation by Chapple, propose to him to have the Calculation referred back again to Chapple, or to have it settled by Richards; but Mr. P—— refused it, and particularly as to Chapple, for that Mr. Jeffery had told him, Chapple was too apt to undervalue Estates."

There is something awkward in the wording of this Position. " The Doctor did *on seeing this Estimation* propose."— The Doctor was the first Person that saw it, he had it from Mr. Chapple, and gave it to Mr. Pitfield; but Mr. Pitfield did never admit, nor did the Doctor prove, that he proposed any such Thing at *that Time*; and indeed why should he before any Fault was found in the Calculation? Therefore this Expression, " The Doctor did *on seeing, &c.*" serves to mislead the Reader's Judgment *in point of Time*. It does not appear, that the Doctor did *at all* propose to refer the Calculation back to Mr. Chapple, till near three Weeks after he had given it to Mr. Pitfield, nor till after he had insisted upon the Validity of his Bargain, upon the Footing of this Calculation, in the Conference which he had with Messrs. Jeffery and Pitfield on the 13th of September; nor even *then*, till these Gentlemen had pointed out some notorious Falsities in the Facts upon which the Calculation was founded: Nay, *after this*, it appears
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by the Evidence of Mr. Jeffery, corroborated with that of Mr. Chapple, that the Doctor *never* proposed a Re-examination of the Calculation *at large*, but said, that possibly there might be one or two small Mistakes in it, which might be altered. — In short, the little Truth which there is in this ninth Position, hath so much Alloy in it, and bears such visible Marks of the *Fee*, that it will not pass.

The first Argument that Counsellor Shapleigh advances to prove that Dr. Andrew acted a fair and honest Part, is built upon a Supposition of the Doctor's being a Man of Sense and Understanding; from whence he concludes, that the Means which he made use of to obtain the Valuation of Mr. Pitfield's Estate were fair and honest; because had he made use of a fraudulent Method, it was so open to Detection, that a Man of Sense could have no Hope of succeeding in it, and therefore would not attempt it. I answer,

First, This Method of proving a Man's Honesty, in a particular Transaction, from the Supposition of his being in general a Man of Sense, is very inconclusive. Moral Writers, as well as Divines, agree, that every Species of Iniquity is morally foolish; because it is detrimental, upon the Whole, to the Happiness of the Agent: But then they always suppose that Men of very good Understandings are liable to fall into Practices, which, in this View, are incompatible with true Wisdom; because in the very Idea of accountable Creatures a sufficient

cient Share of Understanding is supposed, and indeed without it there could be no such Thing as Wickedness.

Secondly, Honesty is not so much a Quality of the Head as of the *Heart* ; for, was it otherwise, the most sensible Men would be the most honest, and the simplest the greatest Knaves : But the History of Mankind unanswerably proves this melancholy Truth, that Men who have enjoyed an uncommon Share of Understanding, have been scandalously, and incautiously guilty of Iniquity. A Thousand Instances might be produced to confirm my Assertion ; but I shall mention only two, which Counsellor Shapleigh hath undoubtedly met with.

Lord Verulam, whose Understanding was an Honour to Human Nature, became a Disgrace to it thro' a Greediness of Money. He was impeached for receiving Bribes as a Judge ; his Offence was too notorious to be concealed or defended, and he was found guilty.

The Earl of Macclesfield, another Lord Chancellor, fell likewise under the Temptation of Mammon : His Misdemeanors were so open to Detection, and so frequent, that, notwithstanding his ingenious and plausible Defence, he was unanimously found guilty by the House of Peers. — From hence then it is certain, that Men of the most distinguished Talents may, at Times, sacrifice their Honesty, and Prudence too, to the Love of Money.

Thirdly,

Thirdly, I cannot think that Counsellor Shapleigh, in *this* Instance, hath acted like a judicious Advocate, in connecting his Client's Honesty with his Understanding, and making them dependent on each other. In my Opinion, this is risking too much, and brings his Client's Understanding in Question, as well as his Uprightness; because, should his Honesty be proved to be defective, his good Sense will, according to the Counsellor, be in the same Predicament: And it seems to be very strange, that the Counsellor, who professes to have so high an Opinion of the Doctor's Understanding, Page 48, as to make it the Foundation of his Argument, should be the only Person in this Debate who charges him with *Folly*; and yet this he does in the 53d Page: By which it should seem, by the Counsellor's Logic, that a Man of his Client's sound Understanding could not commit an *unfair* Action, although he might very well be guilty of *Folly*. But,

Fourthly, All that Mr. Pitfield alledges against the Doctor may be true, without bringing any Suspicion upon the Soundness of his Intellects, if we attend to *the Manner* of his acting: For, Mr. Pitfield having, with unusual Confidence in the Doctor's Honour, left him to collect the proper Materials, and to carry them to Mr. Chapple; the Doctor thought fit to give in such as were best suited to his Purpose; but he had Understanding enough not to shew them to Mr. Chapple, till he was satisfied that the Steward's Books were at a Distance,

stance, and could not be seen for some Time : Upon this he produced his Articles, and was in haste to have a Valuation made, without mentioning a Word of the Purpose to which it was to be applied. This Mr. Chapple complied with ; and the Doctor having succeeded so far, ventured to give it to Mr. Pitfield, as a true Valuation of the Estate ; and notwithstanding Mr. Chapple's cautionary Note, Mr. Pitfield was so struck with the Smallness of the Value, that it does not appear he saw it, till Mr. Chapple put him in mind of it several Weeks after. — This plain Narration of the Doctor's Management, effectually rescues the Reputation of his Abilities from the Danger into which the Counsellor's Argument had brought it.

The second Pillar upon which Counsellor Shapleigh supports his Opinion, is the Conversation between Dr. Andrew and Mr. Pitfield, on the Evening of the 13th of September, (after the Conference with Mr. Jeffery,) and the Paper sent to Mr. Chapple for another Calculation ; the Contents of which Paper were either dictated or acquiesced in by Mr. Pitfield. — This Paper, for so I shall call it by way of Distinction from the Articles, on which the Calculation had been made, the Counsellor says, Page 60, contains “almost a Demonstration of the Doctor's Candor, and of his honest Intentions.” — Again, Page 61, “The Uprightness and Integrity of the Doctor's Behaviour in this Affair, seems to me to be almost proved

proved to a Demonstration by this Fact only.”
 — Before I enter into a minute Examination of this Particular, I must tell the Counsellor, I sincerely wish he could make it appear that the Doctor's Uprightness, in all that passed between him and Mr. Pitfield in the Evening of September the 13th, was not only almost, but altogether, demonstrable: But supposing this to be the Case, I should put him in mind, as a Brother Referee, that this Instance of the Doctor's Uprightness comes *too late*, and is therefore nothing to our Purpose, — The Question before us is, Whether the Means the Doctor *had* made use of to obtain a Valuation of the Estate were fair or fraudulent; and this Question, which is the only one we know of, must be determined by Occurrences *previous to the Existence of this Paper*, and therefore we have nothing to do with it. Mr. Pitfield rests his Charge upon the Falsity of the Articles given to Mr. Chapple in August, and on the Use which the Doctor made of the Calculation growing out of these Articles, and therefore Mr. Pitfield's Accusation may be very just, and yet the Doctor might have acted very honestly *afterwards*. From hence I conclude, that supposing Mr. Shapleigh could prove this Paper of the 13th contained a Set of right Articles, and that it was agreed between Dr. Andrew and Mr. Pitfield to fix the Price of the Estate to whatever Sum should be produced by a Calculation from them; yet this Agreement could not annihilate what the Doctor had done *before*;

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and whether *that* was honest or not, is the Matter referred to us. — I might perhaps safely enough dismiss the Paper referred to, as an impertinent Intruder into the Controversy, without farther Notice; and I certainly should do so, was I engaged in Dispute with a Brother Tradesman; but Counsellor Shapleigh's Arguments shall be treated with more Respect; his Character, his Experience in Altercation, require it. I shall therefore endeavour to shew, by very probable Arguments, that this Paper was not drawn up in Consequence of a second Agreement between Dr. Andrew and Mr. Pitfield, and that neither the one or the other of them did consider it as a Foundation for a new Bargain.

Mr. Pitfield asserts that, the Week after this Paper was written, he both wrote and went to Dr. Andrew, with an Offer of leaving the Valuation of his Estate to Messrs. Jeffery and Ley: And although the Doctor refused this Offer, yet he never once mentioned this Paper, as his Reason for doing so; neither did he mention it at all, when Mr. Pitfield told him that he would advertise a public Sale for his Estate. Now if this be true, and nothing appears to the contrary, it is not probable that the Doctor looked on this Paper as containing any thing like an Agreement between him and Mr. Pitfield for a new Bargain; because, in that Case, it would have furnished him with a proper Objection to Mr. Pitfield's Proposal, as an Absurdity;

dity; as indeed it would have been, and the Doctor would hardly have overlooked it.

Again ---- In the Conversation which the Doctor had with Mr. Chapple, about ten Days after he had sent him the Paper (See Mr. Chapple's Pamphlet, pa. 10, &c.) he seemed very desirous of obtaining that Gentleman's good Opinion; he did not mention a Word of this Paper, which, one would think, could not have been avoided, had he known it to have been of such Consequence as is now pretended. ---- Besides, had this Paper been what Doctor Andrew and Mr. Shapleigh would have it thought, the Calculation already made must, to all Intents and Purposes, have been annihilated; and it would have been impertinent even to have mentioned its Validity: But the Doctor was so far from this Way of thinking, that he was quite silent as to the Paper, constantly adhering to the Calculation made, and left Mr. Chapple abruptly, with this remarkable Declaration, -- " That there might possibly be one or two small Mistakes, in the Materials which he had given for the Calculation, and that he would insist on a Price agreeable *thereto*, when these Mistakes were corrected.

The Evidence of Mr. Dicker, who appeared on the Doctor's Behalf, proves by fair Inference, that this Paper was not considered by the Doctor, as Materials for a new Calculation to found a Bargain upon; and also that Mr. Pitfield and the Doctor were upon ill Terms

at the Time the Paper was made, which was the 13th of September. Mr. Dicker says that on the 14th, at the Doctor's Request, he went to Mr. Pitfield, and endeavoured to make a Compromise between them, with respect to the Sale of the Estate; but Mr. Pitfield would not consent. Now in case this Paper of the 13th was, as the Doctor pretends, agreed between him and Mr. Pitfield to be the Foundation of a new Bargain, how absurd was it in the Doctor to send his Friend *the very next Day* to effect a Compromise? especially as the Doctor tells us, in his Short Reply, Page 14, " Mr. P—— came to my House, an Hour after the Counsellor had finished his Abuse, September the 13th, and said (or by his complaisant Deportment seemed to say) --- let not you and I, who have been Friends so long, quarrel for a Trifle; I am come to give you fresh Materials to be sent to Chapple, for a new Calculation;" and accordingly did so. — By this the Doctor would have it thought, that he and Mr. Pitfield were on good Terms the Evening of the 13th, and in a fair Way to agree for the Estate; and yet on the 14th Mr. Dicker declares that he went to Mr. Pitfield, at the Doctor's Request, in order to reconcile them, and compromise their Difference.

If the Reader is not satisfied from these Reasons, that the Paper was not written or considered by the Parties as a Foundation for a new Agreement; he ought at least to be convinced by the Doctor's own Declaration which he

he made to me at the Reference: For when the Doctor had authenticated, and Mr. Pitfield had acknowledged its Existence, I asked the Doctor this Question --- " Pray, Doctor, why was this Paper sent to Mr. Chapple for another Calculation; was it agreed between you and Mr. Pitfield that the Value of the Estate arising out of it should be the Price that you would give, and he would accept for it?" To this the Doctor answered in these Words, " I cannot say it was so."

It is very true, Mr. Pitfield did not at first admit that there was any such Paper in Being. — He declared he had not the least Remembrance of his having dictated or wrote any such Paper at the Doctor's House. But the Doctor, however, did effectually prove all this to be true; and mentioned such Circumstances as convinced Mr. Pitfield of his Mistake, and brought the whole Transaction into his Memory: And he then said, the Reason, as he believed, of his Difficulty to recollect it, was the Doctor's calling it Fresh Instructions for a new Calculation; as if it implied a second Agreement for the Estate. But Mr. Pitfield readily acknowledged his dictating the Articles, and that he heard the Doctor read the Letter for Mr. Chapple at the End of them.

His Account of the Matter was this: That going to Dr. Andrew in the Evening of the 13th of September for Mr. Chapple's Paper, he and the Doctor fell into the same Train of Conversation as had engaged them a few Hours before;

before ; which of Course put them into an ill Humour with each other : — That the Doctor asked, “ What is the mighty Difference between the Sum arising out of my Instructions to Chapple, and the real Articles of Outgoings ? ” — That Mr. Pitfield answered, “ You shall see if you will write them down ; ” which the Doctor did, and, after adding the Letter, said, “ I will send this to Chapple, to see what the Odds will be : ” To which Mr. Pitfield replied, with that Resentment which he was pretty full of, “ You may send them where you please : ” And Mr. Pitfield did farther declare, that he dictated these Articles, without the least View or Apprehension of their being the Foundation of any new Bargain, but only to comply with the Doctor's Request, and, to use his own Expression before the Referees, “ not as *fresh Instructions*, but to shew him his Iniquity.”

This seems to me the true Account of this Paper ; because it doth not clash with anything that the Doctor or Mr. Pitfield did in this Affair afterward. But the Supposition of their being fresh Instructions for a new Bargain, besides the Improbability of it at first Sight, brings a long Train of Improprieties, Absurdities, and Self-Contradiction, from the Doctor.

Page the 50th, the Counsellor blames Mr. Pitfield for shewing the Calculation to Mr. Jeffery, instead of expostulating with the Doctor about the Errors of it ; which, Page 51,
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" most surely, according to the Rules of Honour and Conscience, he ought to have done."

I answer, — The Counsellor goes beyond the Limits of his Province, when he scrutinizes Mr. Pitfield's Conduct. Our Question is, whether Dr. Andrew acted fairly and honestly in the Transaction about the Estate. — The Counsellor thinks he did; but the Way to make it out is, not by arraigning Mr. Pitfield, or any other Man; and altho' the Counsellor must know this to be true, he knows likewise that it is among the Arts of Dispute, at Times, to change the Question; and that if a Man, who is making a Defence to an Accusation, can manage it so as to appear to be the Accuser, he gains a great Advantage, which he has no Right to. However, as some Stress is laid upon the supposed Faultiness of Mr. Pitfield's Conduct in this Respect, I shall not hesitate to say that I think it was blameless. — Had the several Articles, upon which the Calculation was made, been tolerable, with such Mistakes only as might proceed from Inadvertency, Mr. Pitfield would have been bound in Honour not to have endeavoured at exposing them. But this was not the Case: He saw that eight of the nine Articles were wrong in a flagrant Degree: By Means of which his Estate, that there was Reason to think was worth 600*l.* and actually sold for so much afterwards, was reduced to 350*l.* Upon this he concluded, very naturally I think, that Dr. Andrew had an Intention to defraud him, and therefore determined

terminated to trust nothing farther to his Honour, but to take the Advice of a Friend, who was a Man of Sense, and skilled in the Law.

Counsellor Shapleigh frequently mentions, and always takes for granted, that Dr. Andrew, from the Time of the Calculation being found fault with, constantly and freely offered to have the Whole re-considered by Mr. Chapple or Mr. Richards (See Page 47, 51, 62, &c.). This the Counsellor should have supported with some Proof; but I do affirm there was none, and that the Declaration of Mr. Pitfield, with the united Testimony of Mr. Jeffery and Mr. Chapple, will not admit the Supposition of its being true.

Counsellor Shapleigh has hitherto appeared in the Character of a subsidiary Ally to the Doctor; but, as if the Fees had been doubled when he came to the 57th Page, he boldly becomes the Principal; --- throws out the Doctor's Name, and puts in his own; that, as he says, he might understand the Question; --- which indeed it was high Time for him to do. But there was no Way, it seems, to obtain this Understanding, but by supposing *another* Case, --- namely, --- "Mr. P----- and myself agree, that I shall have his Estate, paying so much for it by way of Annuity, as Mr. Chapple, who is Steward of the Manor where the Estate lies, and consequently is (or can instantly almost with the greatest Ease make himself) Master of every material Circumstance attending this Estate."----- Here the
Counsellor

Counsellor becomes so violent in his Zeal, that there is no holding him; for his next Words are, --- " I am as crafty a Knave, and as great a Cheat, as Mr. P—— has declared the Doctor to be."

The Counsellor says, that he supposes *this* Case that he may thoroughly understand the other Case in Dispute: And, for aught I know, it may be exactly calculated for the Assistance of his Understanding: But I am not ashamed to confess, that, to me, the very Beginning of the Case, which I have fairly quoted, wants to be enlightened by some other Case, before it can be understood, whether the Counsellor was to have the Estate for as much as Mr. Chapple was to have it; or whether he was to have it for the Price that Mr. Chapple should say was the Value of it. His *Expression* is for the first; his *Meaning*, I imagine, should be for the last. The Truth of it is, there are three or four Parentheses in the Beginning of the 58th Page, which appear to me like an entangled Chain; and then immediately follows, " I am as crafty, &c." ---- Well; be that as it will, my general Answer to the supposed Case, is, that it hath no Business here: For if it be different in any material Circumstance from *our* Case, then it is a Piece of Sophistry; and if it be exactly the same, then it is an insipid Tautology: But it is not the latter, --- First, positively --- It is said in the supposed Case, that Mr. Chapple could instantly almost, and with the greatest

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Ease,

Ease, make himself Master of every material Circumstance attending the Estate : But in the real Case it was otherwise ; Mr. Chapple was sick ; his Papers were at a Distance, Dr. Andrew was his Physician at the Time, and seemed to be well assured that Mr. Chapple could not get at *any* material Circumstance for some Weeks, and so it happened.— Secondly, negatively — The supposed Case hath nothing of that Confidence, which Mr. Pitfield put in the Doctor ; nothing of a false Set of Articles framed by the Doctor, nor of his concealing them from Mr. Pitfield ; nor of his concealing from Mr. Chapple that he was to make a Valuation of the Estate for Sale.— And therefore I am satisfied that I have treated this fictitious Case no worse than it deserves.

I can find nothing more in the Counsellor's Pleadings which bears the Face of an Argument. His Pathos in the 63d Page may remain ; because, mutato nomine, it will nearly do as well for Mr. Pitfield as for the Doctor : And as to Counsellor Shapleigh's Declaration that he shall not have the worse Opinion of Mr. Tremlett if his Opinion should be different, --- Mr. Tremlett's Compliments to Counsellor Shapleigh, and assures him that he never quarrelled with any Person about a Difference of Opinion ; but that he thinks no one can have a proper Assurance of what the *real* Opinion of any Man may be, when it is given in Consideration of a Fee.

CONCLUSION.

C O N C L U S I O N.

I Shall now give a summary View of the Transaction, by relating the Facts.

Dr. Andrew and Mr. Pitfield agreed that Mr. Chapple should make a Valuation of the Estate, and that his Valuation should be binding upon both Parties.

Mr. Pitfield, in Confidence of the Doctor's Honesty, left to him the collecting the Articles of the Outgoings, &c. in order to lay them before Mr. Chapple, for the Purpose mentioned.

Dr. Andrew accepted this Task, and instead of *collecting* the real Articles of Outgoings and Income, he did I N V E N T a Set of Articles, which were in Number nine; eight of which were false, and injurious to the Value of the Estate, more than One-third Part of the Whole.

Dr. Andrew did *conceal* his Articles from Mr. Pitfield, and carried them to Mr. Chapple, from whom he did *also conceal* the Agreement between himself and Mr. Pitfield to leave the fixing a Price for the Estate to him.

Dr. Andrew did not produce his Articles to Mr. Chapple, till he found that the Steward's Books and Papers relating to the Estate were at Powderham, and Mr. Chapple had told him it would probably be a considerable Time before

fore his Sickness would permit him to consult them. *Then* the Doctor produced his Articles, as the best, or exactest, he could get, and desired Mr. Chapple to make a Calculation, for his private Satisfaction only.

Mr. Chapple did make the Calculation accordingly, and added a cautionary Note, signifying that it was made upon supposed Facts, as stated by the Doctor; the Truth of which Mr. Chapple did doubt, because, according to these supposed Facts, the Price of the Estate was no more than 350*l*.

As soon as the Doctor received this Calculation, he carried it to Mr. Pitfield, and gave it to him as Mr. Chapple's Calculation of the *real* Value of the Estate: And the Doctor did, at sundry Times, claim the Estate upon the footing of this Calculation, by virtue of his previous Agreement with Mr. Pitfield. This he did repeatedly and strongly before Mr. Jeffery on the 13th of September, and to Mr. Chapple about ten Days after.

These are the Facts which appeared in Evidence, or by the Doctor's Confession: And one would imagine that the plain Dictates of Common-Sense and Honesty, are sufficient to give a clear Verdict upon them: But the Management, or Sense, if Mr. Shapleigh pleases, of the Doctor; his Volubility, his Intrepidity
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in asserting, together with the Abilities of a Veteran Lawyer, have obscured the Question, and perplexed the Minds of many. My Endeavour hath been to state it fairly, to set down all the Circumstances which relate to it, and to avoid all others. I have omitted much of what Mr. Shapleigh hath related, because I found it to be irrelative to the Matter in Dispute; and I have recorded some Particulars, which that Gentleman left out, because I think them very material.

A State of the Facts is the only Argument that I trust to, for the Support of my Sentiments: With a clear Idea of these, let the Reader put this Question to himself:—“Was I in the Doctor’s Situation, would I act as he did?”—And if he should find no Objection to arise in his Mind against acting the same Part, he ought, with Mr. Shapleigh, to acquit the Doctor and blame Mr. Pitfield.—But if, on asking this Question of his own Heart, the Honesty of his Nature should revolt against the Supposition of his acting in this Manner; if the Idea of it should give him Pain, and raise his Abhorrence, in Proportion to his Hatred of the Breach of Confidence and Dishonesty in dealing; he then will — he *must* conclude, with me, — That *the Means which Dr. Andrew made use of to obtain Mr. Pitfield’s Estate, were not fair and honest, but deceitful and fraudulent.*

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argument hath been to show it false, to
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and to avoid all others. I have omitted none
of what Mr. Staphleigh hath related, because I
found it to be instructive to the Jurors in this
case; and I have recorded some I mentioned
which that Gentleman has not because I think
them very material.

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A State of the Facts is the only Argument
that I trust to, for the sake of my Gen-
tlemen: With a full view of these, let the
Reader put this Question to himself:—Was
I in the Doctor's Situation, would I not be
justified?—And if he thought so, the Question
to me in his mind against a day the same
that he ought, with Mr. Staphleigh, to answer
the Doctor and blame Mr. Staphleigh. But if
on asking this Question of his own heart, the
honour of his Name should revolt against the
Proposition of his acting in this manner, let the
fact of it should give him pain, and make his
diffidence, in Propositor to his friend of the
honour of Confidence and Honesty in deal-
ing, he then will — be wiser and conclude
with me, — That the Matter which Dr. Staph-
leigh made use of to obtain Mr. Staphleigh's
verdict was just and honest, but that the
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